IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

CRL.A.No. 781 of 2006()

AGAINST THE JUDGEMENT/ORDER IN CRLP.2204/2006 Dated 29/03/2006
C.C.55/2005 of JUDICIAL FIRST CLASS MAGISTRATE
COURT, NEYYATTINKARA.

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APPELLANT: COMPLAINANT

K.RADHAKRISHNAN, ERATTAPLAVILA VEEDU,
ATHIYANNOOR, RAMAPURAM, THANNIMOODU P.O.,
NEYYATTINKARA.

BY ADV. SRI.G.SUDHEER

RESPONDENTS: ACCUSED & STATE

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1. S.VINOD KUMAR, KANNANCODE VEEDU,
PALLICHAL P.O., THIRUVANANTHAPURAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR
SRI.R.V.SREEJITH
PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKAN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No.781 of 2006

Dated this the 13th February, 2007.

J U D G M E N T

The complaint preferred by the complainant, the appellant herein, had been dismissed by the Judicial First Class Magistrate Court-I, (Principal Munsiff Court), Neyyattinkara, under Section 256 Cr.P.C., as the complainant, as well as his pleader were absent, when the case was taken up on 6.9.2005. Hence this appeal, after obtaining leave of this Court.

2. The learned counsel appearing for the appellant, complainant, submits that the first respondent, accused, did not appear, and, therefore, the court below was only expected to take steps to get the appearance of the accused. In such circumstances, the presence of the appellant, complainant, was not necessary. Counsel, therefore, assail the order passed by the learned Magistrate. However, there is no documents produced before me, to substantiate the above submissions. But taking a lenient view, so as to give an opportunity to both sides to adduce evidence, in respect of their contentions, I am inclined to give an opportunity to the parties.

3. In such circumstances, I set aside the impugned order, dated 6.9.2005, and restore C.C.No.55/2005 (old S.T.Case No.1077/2004) to the file of the Judicial First Class Magistrate Court-I, (Principal Munsiff Court), Neyyattinkara.

4. The parties shall appear before the court below on 19.3.2007.

5. The learned Magistrate shall dispose of the matter, in accordance with the law, as early as possible, and in any case, within two months from the date of appearance of the parties, the case being of the year 2003.

Crl.Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.